IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2457 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ADIVASI THAVARBHAI KANABHAI DINGAICHA

Versus

RATNAJI REVAJI THAKORE

Appearance:

1. First Appeal No. 2457 of 2004

MR HARSHIT S TOLIA for Appellant

MRS VASAVDATTA BHATT for Respondent Nos.1 and 2

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 04/05/2005

ORAL JUDGEMENT

1. ADMITTED.

Ms. Vasavadatta Bhatt, learned advocate appears and waives service of notice of admission on behalf of

respondent Nos.1 and 2, driver and owner of the S.T. Bus involved in the accident.

2. Since the issue involved in this appeal runs in a narrow compass and the amount involved under the appeal is of very meagre and petty claim, with the consent of the learned advocates appearing for the parties, the appeal is taken up for final hearing today and is disposed of by this judgment.

3. Instant appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act' for short) is directed against the judgment and award dated 8.3.2004 rendered in MACP No. 28 of 1988 by the MACT (Main), Banaskantha at Palanpur by which the claim petition filed by the appellant ('the claimant' for short) under Section 166 of the Act to receive compensation of Rs.50,000/- from the respondents came to be partly allowed and thereby it was held that the claimant is entitled to recover an amount of Rs.13,940/- from the respondents jointly and severally with interest at the rate of 9% from the date of the petition till the payment is made alongwith proportionate costs of the petition.

4. According to the claimant, on 1.1.1988 at about 1.45 P.M. he was travelling in S.T. Bus bearing registration No. GRU 6782 as a paid passenger. The said bus was proceeding from Mount Gubbar towards Ambaji. It was being driven by its driver - respondent No.1 rashly and negligently and due to uncontrollable and excessive speed, he could not control the steering and therefore the said bus turned turtle on the road side as a result thereof some of the passengers, including the claimant, sustained multiple injuries. According to the claimant, he sustained injury of fracture of left collar bone and injury in ear. It was the case of the claimant, the accident was the result of rash and negligent driving on the part of respondent No.1 who was driving the S.T. bus at the relevant time. The claimant was admitted in Cottage Hospital, Ambaji and thereafter shifted to Civil Hospital, Palanpur for better and further treatment where he was treated as an indoor patient for about 1 1/2 months. Thereafter also he took treatment of Dr. Amrutbhai A. Patel, an orthopaedic surgeon at Palanpur. As per the certificate issued by Dr. Amrutbhai Patel, the claimant sustained 10% disability to the body as a whole. Therefore, on all counts, including mental pain, shock and sufferings, future and past economic loss, medical expenses, etc., the claimant claimed total compensation of Rs.50,000/- together with interest and cost thereon from the respondent No.1 and the appellant

herein.

5. The claim petition was contested by the appellant - GSRTC by filing written statement at Ex.10 wherein inter alia several contentions were raised. Almost all the averments made in the claim petition including the rashness and negligence on the part of the driver of the ST bus in driving the bus, injuries sustained by the claimant, economic loss suffered by the claimant, permanent partial disability suffered by him and the quantum of compensation claimed, were denied and it was prayed to dismiss the claim petition with costs.

6. The Tribunal on appreciation, analysis and evaluation of the evidence on record came to the conclusion that the claimant sustained injuries due to rash and negligent driving of the ST Bus No. GRU 6782 by its driver - respondent No.1.

7. So far as the quantification of compensation awarded by the Tribunal is concerned, it has awarded the amount in the following break-up:

Rs. 6,240/- future loss of income.
Rs. 1,200/- for actual loss of income.
Rs. 5,000/- for pain, shock and sufferings.
Rs. 1,500/- for medicines, medical treatment,
attendant charges, special diet,
transportation, etc.

Rs.13,940/- Total

The Tribunal has therefore awarded Rs.13,940/- together with interest at the rate of 9% per annum from the date of the petition till realization with proportionate costs which has given rise to the present appeal at the instance of the original claimant.

8. Mr. Tolia, learned advocate of the claimant, has contended that the amount awarded by the Tribunal by way of compensation is extremely on lower side. According to him, looking to the seriousness of the injuries and resultant disability suffered by the claimant, the amount of compensation of Rs.5,000/= awarded by the Tribunal under the head of mental pain shock and sufferings is a very meagre amount and it is on a very lower side which requires upward rise. He has also contended that the amount awarded by the Tribunal under the head of future economic loss is also required to be raised upwardly as it is also on a very lower side. He therefore prayed to modify the award by awarding more amount under these two

heads.

9. Ms. Vasavadatta Bhatt, learned advocate for the respondents, has supported the award as according to her the impugned award does not call for any interference. According to her, the Tribunal has awarded just compensation. She therefore urged to dismiss the appeal.

10. This Court has considered the submissions advanced by the learned advocates appearing for the parties, perused the impugned judgment and award and the set of evidence supplied by Mr. Tolia during the course of his submission.

11. On reappreciation, reevaluation and reanalysis of the evidence, more particularly, Ex.18, which is an injury certificate issued by the Medical Officer, Cottage Hospital, Ambaji, it is seen that there was a fracture of left clavicle bone. Notwithstanding the fact that the claimant had sustained a fracture of left clavicle bone, the Tribunal has awarded only Rs.5,000/- under the head of mental pain, shock and sufferings which, according to this court, is extremely on lower side. In the opinion of this Court, under the head of mental pain, shock and sufferings, the Tribunal ought to have awarded Rs.15,000/- as against Rs.5,000/- as awarded by it under this head.

12. So far as the amount awarded by the Tribunal towards future economic loss is concerned, Mr. Tolia could not persuade this Court as to how this amount is on lower side. Therefore, this Court is of the opinion that the amount awarded under the head of future economic loss does not require upward rise.

13. This Court is, therefore, of the opinion that the claimant is entitled to receive an additional amount of compensation of RS.10,000/- under the head of mental pain, shock and sufferings which would meet the ends of justice.

14. For the foregoing reasons, the appeal succeeds in part and accordingly it is partly allowed with no order as to costs. It is hereby held that the claimant is entitled to recover Rs.10,000/- as an additional compensation under the head of mental pain, shock and sufferings from respondents Nos.1 and 2 jointly and severally with interest at the rate of 9% from the date of the petition till its realization.

15. Modified award be drawn accordingly.

16. The S.T. Corporation is directed to deposit the amount of Rs.10,000/- awarded by this Court by way of additional compensation to the claimant together with interest with the Tribunal within a period of eight weeks hereof. On the S.T. Corporation depositing the amount as aforesaid with the Tribunal, the Tribunal shall pass appropriate order with regard to disbursement of the amount in favour of the claimant.

(A.M. Kapadia, J.)

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